

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

7 || JOSE MORENO, et al.,

## Plaintiffs,

No. C 04-4772 PJH

v.

## ORDER RE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

10 CANYON SPRINGS ENTERPRISES,  
et al.,

## Defendants.

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13 The court has reviewed Magistrate Judge Zimmerman's Report and Recommendation  
14 Re: Entry of Default Judgment. Plaintiffs have filed objections to the report and  
15 recommendation, solely on the issue of the recommendation as to defendant Richard  
16 Hamilton.

17 As to defendant Canyon Springs, the court finds the Report correct, well-reasoned and  
18 thorough, and adopts it in every respect. Accordingly, as to defendant Canyon Springs, the  
19 motion is GRANTED.

20 As to defendant Hamilton, the Magistrate Judge recommended denial of the motion for  
21 default judgment because plaintiffs had not shown that Hamilton was not an infant,  
22 incompetent, or a person in military service. Plaintiffs have filed a motion for reconsideration  
23 and submit supplemental evidence on the issue. The court construes plaintiffs' motion for  
24 reconsideration as an objection to the report and recommendation pursuant to Fed. R. Civ. P.  
25 72(b) and 28 U.S.C. § 636(b)(1)(B), and as a motion for de novo determination and  
26 expansion of the record. See Civ. L. R. 72-3. The court GRANTS the motion for de novo  
27 determination and expansion of the record.

1 In reviewing the supplemental declaration of James Watson, it is clear that Hamilton is  
2 neither an infant, incompetent, or a person in military service. Accordingly, the court declines  
3 to adopt Magistrate Judge Zimmerman's report and recommendation on this issue, and  
4 instead GRANTS the motion for default judgment as to defendant Hamilton.

5 Judgment is entered in plaintiffs' favor and against defendants Canyon Springs and  
6 Hamilton for \$22,202.30, which includes: \$9,288.28 in unpaid contributions, \$6,869.22 in  
7 interest on unpaid contributions; \$2,850.00 in liquidated damages; \$2,812.50 in attorneys'  
8 fees, and \$381.90 in costs. Canyon Springs is further ordered to submit to an audit under the  
9 conditions expressed in the Laborers' Master Agreement.

## 10 IT IS SO ORDERED.

11 | Dated: August 15, 2005

  
PHYLLIS J. HAMILTON  
United States District Judge

15 cc: Wings, Assigned M/J,  
counsel of record